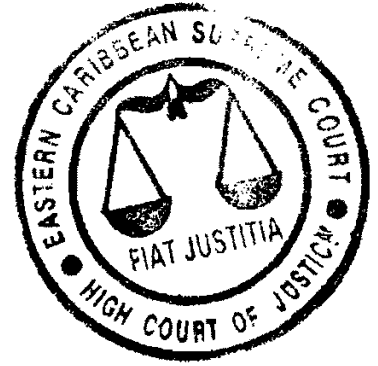


THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 137 OF 2003



BETWEEN:

MAURICE JONES

Claimant

AND

LUELLA MITCHELL
(Administratrix of the Estate of
Cornelius Jones deceased)

LUELLA MITCHELL
(Beneficiary of the Estate of
Cornelius Jones deceased)

REGINALD JONES
THELMA JONES
(Grantees of the Estate of
Cornelius Jones deceased)

Defendants

Appearances:

Mr. Joseph Delves for the Claimant
Mr. Emery Robertson for the Defendants

2006: July 25
September 21
November 28

JUDGMENT

- [1] **THOM, J:** The Claimant on the 3rd day of April 2003 instituted proceedings against the Defendants in which he claimed inter alia a declaration that he is a beneficial owner of a parcel of land at Union Island; revocation of letters of Administration in the estate of Cornelius Jones and cancellation and declaration that a deed of assent in favour of the third and fourth Defendant is null and void.

- [2] The Claimant is the grandson of Cornelius Jones deceased, the First and Second Defendant is the sister of Cornelius Jones, the Third Defendant is the son of Cornelius Jones and the Fourth Defendant is the wife of the Third Defendant.
- [3] Cornelius Jones was married to Caroline Jones and they had two children being Carlton Jones and Andrew Jones. Cornelius Jones had a third son who is the Third Defendant, Reginald Jones. The Claimant Maurice Jones is the son of Carlton Jones.
- [4] At the time of his death on April 22, 1955 Cornelius Jones was the registered owner of a parcel of land at Union Island measuring approximately two (2) acres. Caroline Jones died on July 24, 1961. At the time of her death the estate of Cornelius Jones was not administered.
- [5] In 1994 Letters of Administration were granted to the First Defendant, Luella Mitchell. The First Defendant had sworn to a declaration that the deceased died leaving her as the only person entitled to share in his estate.
- [6] On the 8th day of December 1994 Luella Mitchell by Deed of Assent conveyed the property to the Third and Fourth Defendants.
- [7] The Claimant subsequently instituted these proceedings. The First and Second Defendants filed no defence. The Third and Fourth Defendants' defence was struck out by the Master. On appeal the Master's order was varied and the Court of Appeal ordered that the matter proceed to trial on the issues raised in paragraphs 9 – 13 of the Third and Fourth Defendants' defence.
- [8] Paragraphs 9 – 13 of the Third and Fourth Defendants' defence read as follows:
- "9. Further and or alternatively, the 3rd Defendant asserts that since 1969 he has been in exclusive and uninterrupted possession of the said property paying all the rates, taxes and outgoings on the said property and is in possession of land tax receipts from since that date.

10. The Third Defendant will rely on S. 17 of the Limitation Act Cap. 90 and state that by virtue thereof the Claimant's claim is statute barred.
11. Further and alternatively, in the circumstances, the right (if any) to bring the action for recovery of the land referred to in the Statement of Claim did not first accrue to the Claimant or to Cornelius Jones deceased within 12 years before the commencement of this action and the Claimant's alleged claim or right of action was and is barred by S. 17 of the Limitation Act Cap. 90 and the Claimant's right and title (if any) to the said land were extinguished by virtue of the said S. 17 of the Limitation Act Cap. 90.
12. As to paragraph 16 of the Statement of Claim the Fourth Defendant denies that she has a possessory title to the said property as alleged and put the Claimant to strict proof.
13. The Third and Fourth Defendants deny each and every allegation set out in the defence as if the same were set out herein seriatim."

[9] The issues to be determined are:

1. Whether the Claimant's interest in the property has been extinguished and his right of recovery thereto has been statute barred.
2. Whether the Third Defendant was in adverse possession of the property so as to confer on him a possessory title and bar the Claimant's right of recovery to the land in question.

[10] Section 17 of the Limitation Act provides as follows:

- "1. No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
2. -----
3. -----
4. -----
5. Part 1 of the Schedule contains provisions for determining the date of accrual of rights of action to recover land in the cases therein mentioned."

[11] Paragraphs 1, 2, and 8 (1) and (2) of the schedule read as follows:

- "1. Where the person brings an action to recover land or some person through whom he claims, has been in possession of the land, and has while entitled to

the land been dispossessed on has discontinued his possession, the right of action shall be treated as having accrued on the date of dispossession or discontinuance.

2. Where any person brings an action to recover any land of a deceased person (whether under a will or on intestacy) and the deceased person -
 - (a) was on his death in possession of the land or in the case of a rent charge created by will or taking effect upon his death, in possession of the land charged; and
 - (b) was the last person entitled to the land to be in possession of it,

the right of action shall be treated as having accrued on the date of his death.

8. (1) No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as "adverse possession;") and where the preceding provisions of this schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.
 - (2) Where a right of action to recover land ceases to be in adverse possession, the right of action shall no longer be treated as accruing and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession."

[12] The Claimant testified on his own behalf and the Defendant testified on his own behalf.

[13] The evidence of the Claimant is that the land in issue is situate at Donaldson, Union Island and is the land of the late Cornelius Jones. From the 1940's to present no one lived on the land. During his lifetime Cornelius Jones farmed the land, he planted corn, peas and a few fruit trees. He also reared a few animals there. After the death of Cornelius Jones no one farmed the land. The land is not fenced. Members of the community use it to tie their animals. He is a professional sailor and since 1979 – 1980 to present his boats have plied between St. Vincent, Union Island and Trinidad. He has always been in contact with Union Island and he has seen nothing to demonstrate that Reginald Jones was exercising ownership over the land. His father Carlton Jones used to send money to the Defendant

to pay the taxes for the property and when he did not do so his uncle Andrew Jones sent the money for the taxes.

- [14] Under cross-examination he testified that he lived in England for thirteen (13) years. He returned to live in St. Vincent in 1977 – 1978 at that time Reginald Jones was resident in Trinidad. The land was there unoccupied, not fenced, no crops were planted on the land. The only person who occupied a small portion of the land was Mr. Fitzroy Mills who had extended his boundary onto a small portion of the land. Mr. Mills paid Reginald Jones EC \$9,600.00 this entire sum was sent by Reginald Jones to Andrew Jones in the United States of America.
- [15] The evidence of Reginald Jones is that he was born on Union Island and except for a brief period abroad he lived on Union Island for his entire life. From 1959 he assisted his mother in paying the taxes for the land in dispute. He paid the taxes from 1967 to 1997 in the name of Cornelius Jones and since that time he has paid it in his name and his wife's name. He entered into possession of the land in 1964. He planted crops such as peas and corn and kept his animals on the land. He has remained on the land to the present time. He has never been disturbed by anyone.
- [16] Under cross-examination he testified that he occupied the property since 1959. In 1994 he paid the fees for the Deed conveying the land to him by his aunt Luella Mitchell. In 1959 when he entered into possession of the land he considered it to be his own. He grazed three cows on the land and he planted crops. He went to Trinidad in 1961 and he spent approximately one (1) year and two (2) months. He returned to Trinidad in 1965-66 and he spent approximately one (1) year. He returned to Trinidad in 1978 and resided there with his wife and children until 1986. He never lived on the land, it is not fenced. Cornelius Jones did not live on the land. Cornelius Jones and his wife planted corn, peas and cotton on the land. It also has some fruit trees. He agreed he sent the money he received from Mr. Mills to his brother Andrew. He sent the entire sum after deducting the Western Union Charges. He sent the money to Andrew because he wanted Andrew to buy a tomb stone and a chest plate for his father's tomb. He denied receiving money from Carlton and

Andrew to pay the taxes. He paid the taxes in the name of Cornelius Jones because he was in no hurry to pay the taxes in his own name.

[17] I shall deal with the second issue first since the right of action would only accrue from the time the Defendant Reginald Jones was in adverse possession of the land. The issue is whether Reginald Jones was in adverse possession of the property so as to confer on him a possessory title and bar the Claimant's right of recovery to the land in question. The question the court must determine is whether Reginald Jones was in adverse possession of the land for a period of twelve (12) years before the commencement of these proceedings.

[18] The principles to be applied by the court in determining whether a person was in adverse possession of property were outlined in **Powell v McFarlane** [1977] 38P x CRP p. 452. These principles were approved by the House of Lords in **JA Pye (Oxford) Ltd and another v Graham and another** [2002] 3 AER p. 865 at 866 as follows:

"Legal possession required (i) a sufficient degree of physical custody and control (factual possession) and (ii) an intention to exercise such custody and control on one's own behalf and for one's own benefit (intention to possess). As regards factual possession, everything depended on the circumstances, but broadly, such possession was constituted where the alleged possessor had been dealing with the land as an occupying owner might have been expected to deal with it, and no body else had done so. The necessary intent was one to possess, not to own and an intention to exclude the proper owner only so far as was reasonably possible."

[19] Applying the above principles to this case the question is was Reginald Jones in possession of the property and if so when did he go into possession?

[20] The onus of proving that the owner has been dispossessed is on the party who alleges it. In this case it is the Defendant Reginald Jones. In paragraph 9 of his defence Reginald Jones pleaded that he was in exclusive and uninterrupted possession of the property since 1969. In his witness statement he stated he assisted his mother in paying the taxes from 1959 – 1966. He paid the taxes from 1967 to present. He entered into possession of the property in 1964. He planted peas and corn and kept animals on the said land since then until 2006. Under cross-examination he testified that he entered into possession of the

land in 1959, he reared animals on the land, he planted crops on the land, and he considered the land to be his own in 1959. He paid the taxes but in the name of Cornelius Jones until 1997 by which time that is in 1994 he had paid the fees and received a Deed of Assent conveying the property to him by Luella Mitchell.

[21] Does the above evidence amount to possession of the land as explained in the cases of **Powell and J.A. Pye** being both factual possession and an intention to possess?

[22] It is agreed by both parties that the land was approximately two acres and its nature and manner of use was agricultural. Cornelius James used it for farming and rearing of animals. It is not disputed that the taxes were paid by the Defendant Reginald Jones and that the taxes were paid in the name of Cornelius Jones until after Reginald Jones received a Deed conveying the property to himself and wife from Luella Mitchell. What the Claimant disputes is that the money used to pay the taxes was not provided by Reginald Jones but was provided by the Claimant's father Carlton Jones and on occasions by the Claimant's uncle Andrew Jones. The Claimant's evidence is that the money was sent by post or delivered by hand. However, there is no evidence that he was present when the money was hand delivered or sent by post to Reginald Jones. Nor is there any evidence of what amount of money was sent or hand delivered to Reginald Jones for the taxes. I find that the Defendant's evidence in relation to the taxes was not contradicted. I do not agree with the submission of Learned Counsel for the Claimant that payment of taxes in the name of Cornelius Jones amount to an acknowledgement within the meaning of section 29 of the Limitation Act since Section 30 (1) specifically provides that the acknowledgement must be in writing and signed by the person making it. Section 30(1) reads as follows:

"30.(1) To be effective for the purpose of section 29, an acknowledgement must be in writing and signed by the person making it."

Reginald Jones testified that he planted peas and corn and reared animals on the property. While a person does not have to occupy the entire land to be in possession of it, no evidence was given as to what area of the land was occupied by Reginald Jones for farming. Was it one (1) row of corn and one row of peas, or was it three quarters acre of

corn and one half acre of peas? Also apart from the three cows referred to in 1959 there is no evidence of any animals. Reginald Jones left Union Island and resided in Trinidad between 1961 – 1962, 1965-1966 and 1978 – 1986.

[23] The onus of proof was on the Defendant to prove on a balance of probabilities that he was in possession of the property for a period of twelve years before the commencement of the action. Having regard to the evidence in this case while the Defendant's evidence that he paid the taxes was not contradicted, in my opinion the bald statement of the Defendant that he planted peas and corn and reared animals on the land from 1959 to present was not sufficient to prove that he was in factual possession of the property.

[24] Further as stated earlier there were only two witnesses the Claimant and the Defendant. Having seen and heard both Claimant and the Defendant and having observed their demeanour I do not find the Defendant to be a credible witness. His evidence as to when he went into possession of the property was conflicting. In his witness statement he stated he went into possession in 1964. Under cross-examination he stated he went into possession and claimed land amounting to two acres in 1959 as his own. At this time Reginald Jones was 15 years old having been born on April 25, 1944.

[25] Also in his witness statement he stated he lived on Union Island all his life except for a brief period abroad. Under cross-examination he admitted he lived in Trinidad in 1961 for one (1) year and (2) months, in 1965-66 he lived in Trinidad for one (1) year; and in 1978 he went to Trinidad and lived there with his family for approximately eight (8) years.

[26] When it was suggested to Reginald Jones under cross-examination that he never intended to claim the property as his own and this was demonstrated when he sent the entire sum paid by Mr. Mills for the small portion of land that Mr. Mills had encroached on to his brother Andrew Jones in the United States of America, Reginald Jones' explanation of the purchase of a tomb stone and chest plate for his father's tomb was in my opinion improbable. The exact sum was sent less the fees charged by Western Union. I agree with the submission of learned counsel for the Claimant that this usually happens when a

person is sending money belonging to the person receiving it. Further if the Defendant Reginald Jones was treating the land as his and he had sold a portion of it to a third party that would have been significant indication of both factual possession and the intention to possess on his own behalf and for his own benefit and this would have been included in his defence and in his witness statement. No mention was made of it.

[27] In his witness statement Reginald Jones stated he planted peas and corn on the land from 1964 to 2006 and under cross-examination he stated he did so from 1959 to present. Neither of these statements could be true since peas and corn are regarded as "cash crops" and Reginald Jones admitted that he was living in Trinidad in 1961-62, 1965-66, and 1978-86.

[28] I find that the Defendant has failed to prove on a balance of probabilities that he was in adverse possession of the property for a period of twelve (12) years before the commencement of the action or at any time.

[29] I found Maurice Jones to be a truthful witness. I believe his testimony that since the death of Cornelius Jones the land remained unfenced with a few fruit trees. No one farmed it and people in the community tie their animals on the property. It is quite common for people in St. Vincent and the Grenadines and indeed in the Caribbean for people in the community to tie their animals on land that is not fenced.

[30] I shall now consider the first issue whether the Claimant's interest in the property has been extinguished and his right of recovery thereto has been statute barred. The effect of the provisions of section 17 and Schedule 1 of the Limitation Act Cap. 90 referred to earlier is that the right of action to recover the land is barred whenever 12 years have elapsed from the time when a right of action accrued. The right of action is accrued only when the land is in the adverse possession of a person other than the true owner. Time begins to run at the time when adverse possession is taken of the land. Having found that Reginald Jones did not take adverse possession of the land, I find that this action is not statute barred by the provisions of Section 17 of the Limitation Act Cap. 90.

[31] Judgment is entered for the Claimant. It is ordered that:

1. A declaration is granted declaring that the Claimant is a beneficial owner of the land situate at Donaldson, Union Island measuring two (2) acres more or less butted on the North by a Road on the South by Donaldson reserve on the East by Lot C36 and on the West by the remainder of the Donaldson Estate.
2. Letters of Administration numbered 22 of 1994 to the First-Named Defendant is hereby revoked.
3. Deed of Assent numbered 3898 of 1994 and dated 8th December 1994 from the First and Second Defendant to the Third and Fourth Defendants is declared null and void and is hereby cancelled.
4. Costs to be paid to the Claimant by the Third and Fourth Defendants in the sum of \$14,000.00


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Gertel Thom
HIGH COURT JUDGE